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FCC Mail Room

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

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In the Matter of )  
)  
Acceleration of Broadband Deployment )  
Expanding the Reach and Reducing the Cost of )  
Broadband Deployment by Improving Policies )  
Regarding Public Rights of Way and Wireless )  
Facilities Siting )

WC Docket No. 11-59

**COMMENTS OF THE INC. VILLAGE OF UPPER BROOKVILLE**

The Incorporated Village of Upper Brookville ("Upper Brookville") files these comments in response to Notice of Inquiries released April 7, 2011, in the above entitled proceeding. Through these comments, Upper Brookville seeks to provide the Commission with basic information regarding its local right-of-way and facilities, management, practices, and charges. Upper Brookville strongly opposes any interference or regulation by the Commission regarding Upper Brookville's jurisdiction over its right-of-ways. Upper Brookville, incorporated in 1932, has established fair and effective policies to protect and further public safety, economic development, and other community interests. By adopting rules in this area, the Commission could disrupt this process at substantial cost to local taxpayers and to the local economy. We believe that a basic respect for federalism, a fair reading of the Constitution, and the Communications Act, and an honest assessment of the Commission's limited expertise on local land use matters all point to the same conclusion: This is no place for federal regulations.

Upper Brookville has no basic objection to the deployment of broadband networks in the Village with proper local oversight. There is no evidence that our policies or charges with respect to placement of facilities in the rights-of-way or on County property have discouraged broadband deployment. Our community welcomes broadband deployment, and our policies allow us to work with any company willing to provide services. No company has cited our policies as a reason that it will not provide service. We believe our policies help to avoid problems in delays and broadband deployment by ensuring that broadband deployment goes smoothly for both the providers who follow the rules and the larger community. On the other hand, we also believe that many entities seeking access to our rights-of-way and facilities would prefer to live without rules or regulations, to the great detriment of other users, abutting land owners, commuters, and the general taxpayer.

In response to the NOI, Upper Brookville provides the following information:

1. **Application Procedures, Forms, Substantive Requirements and Charges**

Upper Brookville's right-of-way management and facility placement procedures are clearly outlined within Section 205-20 I of the Village Code which is available on-line.

2. **Source of Delays**

In Upper Brookville, applications are processed very quickly and to date, the Village has received no complaints from applicants citing undue delay in processing. The Village's boards meet regularly and are available to process applications within one month from when they are received.

3. **Improvements**

Upper Brookville has recognized a number of practices that have improved the process. The Village Code is available for review on-line and encourages such preferred practices as collocation of communication facilities.

4. **Permitting Charges**

In Upper Brookville, charges are reasonable. These charges are important because the fees are used to cover Village costs in allowing staff to work with the applicants to better process the application. The fees are also used to recover direct and indirect costs of damage to the rights-of-way and as security against damages in which the Village must later repair.

5. **Local Policy Objectives**

In Upper Brookville, all policies are designed to facilitate the responsible deployment of services; make the services broadly available; ensure public safety; avoid traffic disruption; maintain and repair roadways; prevent public disruption and damage to abutting property; minimize accelerated deterioration to roads that accompanies street cuts; satisfy aesthetic, environmental, or historic preservation concerns; avoid damage to the property of others; and obtain fair compensation for the use of public property.

6. **Possible Commission Actions**

Upper Brookville strongly urges the FCC to refrain from regulating local right-of-way management and facility placement processes. These are highly fact-specific matters, which turn on local engineering practices, local environmental and historical conditions, local traffic and economic development patterns, and other significant community concerns and circumstances. These matters are managed by local staffs with considerable expertise. Imposing a federal regulatory regime would create unnecessary costs for our community and it would have the potential to undermine home rule and the important local political process. Furthermore, Commission regulation of charges for use of the rights-of-way could have significant adverse impacts on the community and make it difficult to continue to maintain

or provide important public services. If the Commission feels compelled to act in this area at all, it should limit itself to voluntary programs and educational activities for the national broadband plan in cooperation with State and local governments.

### CONCLUSION

Upper Brookville urges the Commission to conclude that right-of-way facility management and charges are not impeding broadband deployment. Our policies and procedures are designed to protect important local interest and have done so for many years. There is no evidence that the policies have impaired any company from providing broadband service here, and there are many reasons to believe that federal regulations would prove to be costly and disruptive to our community.

Respectfully submitted,



Terry Thielen, Mayor